



THE ATTORNEY GENERAL OF TEXAS

March 21, 1990

JIM MATTOX

ATTORNEY GENERAL

Honorable Mike Driscoll
Harris County Attorney
1001 Preston, Suite 634
Houston, Texas 77002

Open Records Decision No. 546

Re: Consent to release of
medical records under section
5.08 of article 4495b, V.T.C.S.
(RQ-1921)

Dear Mr. Driscoll:

An open records request, pursuant to the Texas Open Records Act, V.T.C.S. art. 6252-17a, was directed to the Harris County Hospital District asking for medical records of a certain patient "to indicate his diagnosis and what sorts of treatment he required during his October 1989 hospital stays."

Accompanying the request was a consent for the release of medical records. This consent was signed and recited, in pertinent part, "I agree to allow Stephen Johnson with the Houston Chronicle to have copies of any and all medical records of mine."

You assert that the requested information is excepted from public disclosure by section 3(a)(1) of the Open Records Act, which exempts from public disclosure information deemed confidential by law, and cite section 5.08 of the Medical Practice Act. V.T.C.S. art. 4495b.

We agree that the requested information is excepted from public disclosure by the Medical Practice Act. The applicability of the Medical Practice Act depends upon whether the records in question come within the language of subsections (a) and (b) of section 5.08 of that act. Hospital treatment is routinely conducted under the supervision of physicians. Since the file is the result of a hospital stay, all the documents relating to diagnosis and treatment would constitute physician-patient communications or "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." Such records are confidential pursuant to section 5.08 of the Medical Practice Act, V.T.C.S. art. 4495b, and are, thus, "deemed confidential" by statutory law.

You further assert that the consent accompanying the request is insufficient to overcome the confidentiality of the requested information.

Section 5.08 of the Medical Practice Act provides, in part:

(h) Exceptions to the privilege of confidentiality; in other than court or administrative proceedings, allowing disclosure of confidential information by a physician, exist only to the following:

.

(5) any person who bears a written consent of the patient or other person authorized to act on the patient's behalf for the release of confidential information, as provided by Subsection (j) of this section;

.

(j)(1) Consent for the release of confidential information must be in writing and signed by the patient . . . provided that the written consent specifies the following:

(A) the information or medical records to be covered by the release;

(B) the reasons or purposes for the release; and

(C) the person to whom the information is to be released. . . .

(3) Any person who receives information made confidential by this Act may disclose the information to others only to the extent consistent with the authorized purposes for which consent to release the information was obtained.


Section 5.08(j)(1) of the Medical Practice Act sets forth a detailed set of requirements for consent to the release of information. However, the patient's signed, written consent in question here satisfies all the requirements of section 5.08(j)(1), except that found in section 5.08(j)(1)(B), that the consent must specify the

reasons or purposes for the release. You assert that the patient's consent to the release of his records is also deficient in that it fails to identify the requested records with sufficient specificity. However, nothing in section 5.08 implies that any degree of specificity beyond that found in the patient's consent in question here is required. If the records to which the consent is granted are identifiable, they have been described with sufficient specificity. The fact that the actual request for records may not include all those to which consent for release has been granted is immaterial. Nevertheless, as it does not specify the reasons or purposes for the release of the information, the patient's consent is not in compliance with section 5.08(j) of the Medical Practice Act. In the absence of a valid consent for its release, all information protected from public disclosure by section 5.08 of the Medical Practice Act must be withheld.

S U M M A R Y

A consent for the release of information is not in compliance with section 5.08(j) of the Medical Practice Act unless it specifies the reasons or purposes for the release of the information. If the records to which the consent is granted are identifiable, they have been described with sufficient specificity.

Very truly yours,



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